

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEE FAMILY INVESTMENTS, by and through
its Trustee W.B. LEE, Derivatively and on behalf
of Nominal Defendant WASHINGTON
MUTUAL, INC.,

Plaintiff,

V.

KERRY K. KILLINGER, THOMAS W. CASEY,
DEANNA W. OPPENHEIMER, ANNE V.
FARRELL, STEPHEN E. FRANK, PHILLIP D.
MATTHEWS, MICHAEL K. MURPHY,
MARGARET OSMER MCQUADE, MARY E.
PUGH, WILLIAM G. REED, JR., JAMES H.
STEVER, WILLIS B. WOOD, JR.,

Defendants,

And

WASHINGTON MUTUAL, INC.,

Nominal Defendant.

**STIPULATION AND [PROPOSED] ORDER OF
DISMISSAL WITHOUT PREJUDICE**

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WOLFE, WRENN & ZARISKI
Two Union Square
601 Union St., Suite 5110
Seattle, WA 98101
Tel: (206) 467-9088
Fax: (206) 447-9374

The parties to the above-captioned litigation hereby stipulate as follows:

WHEREAS, plaintiff has brought this litigation derivatively on behalf of nominal defendant Washington Mutual, Inc.;

WHEREAS, on September 26, 2008, Washington Mutual, Inc. filed a voluntary bankruptcy petition in the United States Bankruptcy Court for the District of Delaware, *In re Washington Mutual, Inc.*, Case No. 08-cv-12229-MFW (see Notice of Automatic Stay as to Washington Mutual, Inc. (Dkt. 37));

WHEREAS, the debtor-in-possession has exclusive standing to assert a cause of action belonging to the bankruptcy estate (*Pepper v. Litton*, 308 U.S. 295 (1939); *Delgado Oil Co., Inc. v. Torres*, 785 F.3d 857 (10th Cir. 1986); *In re: RNI Wind Down Corp.*, 348 B.R. 286 (Bkrtcy. D. Del. 2006));

WHEREAS, the debtor-in-possession has declined to assign the cause of action to plaintiff, thereby depriving plaintiff of standing to pursue this litigation and depriving this Court of subject matter jurisdiction to entertain the claims asserted herein.

THEREFORE, the parties, by and through their attorneys, hereby **STIPULATE AND AGREE**, subject to approval of the Court, that the above-captioned litigation is dismissed as to all parties, without prejudice, for lack of subject matter jurisdiction, without fees or costs to any party.

Dated: November 18, 2009

s/ John W. Wolfe
John W. Wolfe, WSBA #8028
WOLFE, WRENN & ZARIKSI
Two Union Square
601 Union Street, Suite 5110
Seattle, WA 98101
Telephone: (206) 467-9088
Facsimile: (206) 447-9378
Email: jwolfe@jwwolfelaw.com

Attorneys for Nominal Defendant Washington Mutual, Inc.

**STIPULATION AND [PROPOSED] ORDER OF
DISMISSAL WITHOUT PREJUDICE
CASE No. C05-2121 JCC**

1 Dated: November 18, 2009

2 s/ Barry M. Kaplan

3 Barry M. Kaplan, WSBA #8661
4 Douglas W. Greene, WSBA #22844
5 WILSON SONSINI GOODRICH & ROSATI
6 Professional Corporation
7 701 Fifth Avenue, Suite 5100
Seattle, WA 98104-7036
Telephone: (206) 883-2500
Facsimile: (206) 883-2699
Email: bkaplan@wsgr.com
Email: dgreen@wsgr.com

8 *Attorneys for Defendant*
9 *Kerry K. Killinger*

10 Dated: November 18, 2009

11 s/ Ronald L. Berenstain

12 Ronald L. Berenstain, WSBA #7573
13 PERKINS COIE LLP
1201 3rd Avenue, Suite 4800
Seattle, WA 98101-3099
Telephone: (206) 359-8477
Facsimile: (206) 359-9000
Email: rberenstain@perkinscoie.com

14
15 *Attorneys for Defendants*
16 *Anne V. Farrell, Stephen E. Frank, Phillip D.*
17 *Matthews, Michael K. Murphy, Margaret*
Osmer McQuade, Mary E. Pugh, William G.
Reed, Jr., James H. Stever and Willis B. Wood,
Jr.

18 Dated: November 18, 2009

19 s/ Stephen M. Rummage

20 Stephen M. Rummage, WSBA #11168
21 Steven P. Caplow, WSBA #19843
22 DAVIS WRIGHT TREMAINE, LLP
1201 3rd Ave., Ste 2200
Seattle, WA 98101-3045
Telephone: (206) 757-8018
Facsimile: (206) 757-7018
Email: steverummage@dwt.com
Email: stevencaplow@dwt.com

23
24 *Attorneys for Defendant*
25 *Thomas W. Casey*

1 Dated: November 18, 2009

2 s/ Cyrus R. Vance, Jr.
3 Cyrus R. Vance, Jr., WSBA #
4 **MORVILLO ABRAMOWITZ GRAND IASON &**
5 **SILBERBERG, PC**
6 565 Fifth Avenue, 9th Floor
New York, NY 10017
Telephone: (212) 880-9490
Facsimile: (212) 856-9494
Email: cvance@maglaw.com

7 *Attorneys for Defendant*
8 *Deanna W. Oppenheimer*

9 Dated: November 18, 2009

10 s/ Jess Gilbert Webster
11 Jess Gilbert Webster, WSBA #11402
12 **MIKKELBORG BROZ WELLS & FRYER**
13 1001 4th Avenue, Suite 3600
Seattle, WA 98154-1115
Telephone: (206) 623-5890
Facsimile: (206) 623-0965
Email: jgwebster@mikkelborg.com

14 - and -

15 William B. Federman
16 **FEDERMAN & SHERWOOD**
17 10205 N. Pennsylvania Ave.
Oklahoma City, OK 73102
Telephone: (405) 235-1560
Email: wbf@federmanlaw.com

18
19 *Attorneys for Plaintiff*
20 *Lee Family Investments, by and through its*
Trustee W.B. Lee, Derivatively and on behalf of
Nominal Defendant Washington Mutual, Inc.

1 Pursuant to the parties' stipulation, **IT IS HEREBY ORDERED** that:

2 1. The above-captioned litigation is dismissed as to all parties, without prejudice, for
3 lack of subject matter jurisdiction, without fees or costs to any party; and
4 2. The Clerk is directed to enter judgment accordingly.

5 **IT IS SO ORDERED.**

6 DATED this _____ day of _____ 2009.

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9 John C. Coughenour
10 UNITED STATES DISTRICT JUDGE
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 18, 2009, I electronically filed the foregoing with the
3 Clerk of the Court using the CM/ECF system which will send notification of such filing to the
4 following:

5 **Ronald L Berenstain**
rberenstain@perkinscoie.com

6 **Steven P Caplow**
stevencaplow@dwt.com

7 **William B Federman**
wbf@federmanlaw.com

8 **Douglas W Greene**
dgreen@wsgr.com

9 **Barry M Kaplan**
bkaplan@wsgr.com

10 **Stephen M. Rummage**
steverummage@dwt.com

11 **Cyrus R Vance , Jr**
cvance@maglaw.com

12 **Jess Gilbert Webster**
jgwebster@mikkelborg.com

13 Dated: November 18, 2009

14 _____
15 s/ Barry M. Kaplan
16 Barry M. Kaplan, WSBA# 8661